

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-232-A

IN RE: Procedure to Address Conceptual Issues) **SOUTH CAROLINA OFFICE**
 Around Non-Allowable Expenses) **OF REGULATORY STAFF**
 (See Page 4 of Order No. 2019-341)) **COMMENTS**

The below comments are provided to the Public Service Commission of South Carolina (“Commission”) by the Office of Regulatory Staff (“ORS”) in response to Commission Order No. 2019-477, which requested comments by the public and any interested parties by Friday, September 6, 2019. This docket was opened to comply with Commission Order No. 2019-341 in Docket No. 2018-318-E, in which the Commission directed the establishment of an administrative docket regarding a determination of what public utility incurred expenses should be non-allowable “to ensure clarity for future proceedings.” ORS appreciates the opportunity to provide comments.

ORS recommends that the Commission initiate the formal rulemaking process pursuant to the Administrative Procedures Act (“APA”) to promulgate regulations governing the classification of non-allowable expenses. ORS believes that clear and binding rules regarding non-allowables would provide benefit for both utilities and the public and that regulations are the best means to achieve this end. However, because the rulemaking process does take time, ORS recommends the Commission enter an Order in this docket to place all utilities on notice of its expectations relating to non-allowable expenses. To that end, ORS submits Attachment A, which provides a detailed description of types of typical utility operating expenses that would be classified into each category along with citations to Commission Orders and the National Association of Regulatory Utility Commissioners (“NARUC”) audit manual.

This Commission has the exclusive “power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurement of service to be furnished, imposed or observed, and followed by every public utility in this State.” S.C. Code Ann. §58-3-140 (2015). It is under this authority that the Commission may adopt policies, guidelines or promulgate regulations that control the ability of a utility under the Commission’s jurisdiction to pass certain costs on to its ratepayers.

In exercising its power, the Commission may follow the process set forth under the APA and promulgate a regulation *or* issue a general policy statement or guidance. A general policy statement or guidance lacks the force and effect of a regulation. Whether the Commission should promulgate a regulation or simply issue a general policy statement depends on whether the standard establishes a binding norm. In determining whether a binding norm has been established, the “key inquiry” is,

the extent to which the challenged policy leaves the agency free to exercise its discretion to follow or not to follow that general policy in an individual case, or on the other hand, whether the policy so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion. As long as the agency remains free to consider the individual facts in the various cases that arise, then the agency action in question has not established a binding norm.

Joseph v. S.C. Dep't of Labor, Licensing & Regulation, 417 S.C. 436, 454, 790 S.E.2d 763, 772 (2016) (quoting *Home Health Serv., Inc. v. S.C. Tax Com'n*, 312 S.C. at 329, 440 S.E.2d at 378; *Sloan v. Sanford*, 357 S.C. 431, 491, 593 S.E.2d 470, 598 (2004) (Toal, C.J., dissenting)).

It is ORS’s responsibility to make inspections, audits, and examinations of public utilities on matters within the Commission’s jurisdiction. ORS believes that a set of guidelines or standards that can be applied to utility expenses and that are known to parties appearing before the Commission would comply with the intent of Commission Order No. 2019-341 and benefit both

the public and utilities alike by providing a greater degree of clarity and transparency in Commission proceedings. ORS's comments in this Docket are offered to assist the Commission to adopt policies, guidelines and/or promulgate regulations that:

- (1) Promote judicial economy;
- (2) Streamline the inspection, audit and examination of public utilities;
- (3) Ensure utility compliance with Commission orders;
- (4) Enhance transparency of the utility rates and services; and
- (5) Mitigate the risk to utility customers.

The Commission has historically excluded certain operating expenses from customer rates. In general, the Commission has found that if a utility incurs costs that 1) lack a direct connection with the provision of utility service; or 2) fail to provide a direct and substantial benefit to the customers, the expense is deemed "non-allowable" and disallowed for ratemaking purposes. These Commission Orders are cited in Attachment A to ORS's comments for the Commission's review.

ORS recommends that the Commission begin the rulemaking process established by the APA in order to establish a standard of utility operating expenses that are non-allowable for inclusion in customer rates in rate-making proceedings. Prior Commission Orders serve as a reasonable basis for the standard because the Commission determined the expense classification is not connected with the provision of utility service or did not provide a direct and substantial benefit to utility customers. ORS recommends the Commission begin the promulgation process for a regulation that instructs regulated utilities to categorize and record any incurred expenses considered as non-allowable for rate making purposes as "non-operating" or "below-the-line." ORS's recommendation is in accordance with the Public Utility Accounting Manual 2018, which states, "items below the line normally represent non-operating income and expenses that are not


recovered in the rates it charges its customers.” ORS’s recommendations to establish a standard and instruct regulated utilities to categorize and record expenses would serve to streamline the inspection, audit, and examination during a rate proceeding, assist utilities in their efforts to comply with prior Commission Orders, enhance utility transparency in its reporting of allowable operating expenses, and ensure rates paid by utility customers do not contain non-allowable operating expenses.

In order to provide a framework for the Commission to evaluate a wide variety of utility operating expenses and determine the best path forward to categorize and record non-allowable expenses, ORS organized expenses into nine (9) categories. As shown in Attachment A, ORS also provided a detailed description of types of typical utility operating expenses that would be classified into each category, and a reference to prior Commission Orders or NARUC accounting and audit reference materials.

The nine (9) categories recommended by ORS are: 1) Imprudent or Excessive Expenses, 2) Lobbying and Political Advertising, 3) Political, Charitable, Social and Community Contributions, 4) Institutional Advertising, 5) Recreation, Entertainment or Non-Essential Employee Benefits, 6) Development Grants and Sponsorships, 7) Criminal and Civil Penalties, Fines and Judgements, 8) Merger and Acquisition, and 9) Inflation, Expense Estimates and Contingencies.

ORS appreciates the Commission’s interest in the issues surrounding non-allowable utility operating expenses and believes the above framework could be integrated into Commission regulation. ORS recommends and would support the Commission initiating the rulemaking process in accordance with the APA to promulgate regulations regarding the recoverability by utilities of certain expenses. The recommendation by ORS to initiate the rulemaking process and

promulgate regulations that instruct utilities under the Commission's jurisdiction to categorize and record non-allowable operating expenses below-the-line would provide clarity and streamline the investigation, audit, and examination process for both the utilities and ORS. As the Commission is aware, South Carolina has one of the most aggressive rate proceeding schedules in the nation. ORS's recommendations will also benefit the utility and the customer in future rate proceedings by helping to eliminate prolonged discussions on certain non-allowable expenses and enabling more meaningful discussion on challenging issues facing the Commission. Should the Commission require additional information or comment, ORS is willing to provide such either in writing or at oral argument before the Commission.



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Procedure to Address Conceptual Issues Around Non-Allowable Expenses Attachment A

#	Expense Category	Description	Authorities
9	Inflation, expense estimates and contingencies	Includes, but is not limited to, expense amounts that contain estimates such as Consumer Price Index ("CPI"), are not known and measurable or do not reflect the historic 12-month test period. Not applicable to natural gas purchased gas adjustment and electric fuel adjustment clause proceedings.	S.C. Code Ann. Regs. 103-823-A(3); Commission Order Nos. 81-232 at p.42-43, 85-841 at p.21-22, 2013-79 at p.14-15, 2007-138 at p.11-12